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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,314	10/17/2000	Alain Georges	DBT-001	5229

7590 09/28/2004  
LOUDERMILK & ASSOCIATES  
P.O. BOX 3607  
LOS ALTOS, CA 94024-0607

EXAMINER

DONELS, JEFFREY

ART UNIT PAPER NUMBER

2837

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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*Remailed*  
*9/24/04*

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<b>Office Action Summary</b>	<b>Application No.</b> 09/691,314	<b>Applicant(s)</b> GEORGES, ALAIN	
	<b>Examiner</b> Jeffrey Donels	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,7-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabriel in view of Aoki et al. (US Patent No. 4,399,731)

Regarding Claims 3,4,13,14,26,27, Gabriel (See especially Figs. 1-3, Col. 7 lines 6-20, Col. 8 lines 37-44, Col. 12) discloses all features claimed but does not explicitly disclose the automatic composition feature, the display features, the microphone and compression features, or the radio features claimed.

Aoki et al. discloses an apparatus for automatically composing a musical piece (See Abstract). It would have been obvious to one of ordinary skill in the art to adapt the Gabriel teachings with those of Aoki, as both inventions are narrowly directed towards the art of musical devices that enable a user to easily and simply compose musical pieces.

With regard to the display, microphone, and compression features, it is noted that these recited features would have been notoriously old and well-known in the art of computer audio and computer audio software. It would have been obvious to one of ordinary skill in the art to adapt the Gabriel/Aoki combination with these teachings, so as to be able to expand the number of audio sources available to the user of the Gabriel/Aoki device.

Applicant argues that the combination above does not teach processing of voice/sound samples; however, Gabriel teaches audio data which is well known in the art to be considered sound or voice samples (Col. 8, lines 37-44). Applicant's arguments regarding concurrent composition and playback are not required in the claims as presented.

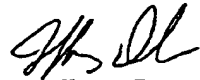
In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, in the knowledge generally available to one of ordinary skill in the art of electronic musical instruments, both Gabriel and Aoki are directed towards computer-implemented musical composition inventions, and it is well-known in the art to combine similar programs with similar features when implemented on a personal computer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Donels whose telephone number is 703-308-3115. The examiner can normally be reached on 9 hour days, first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 703-308-3370. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 2837

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.



Jeffrey Donels  
Primary Examiner  
Art Unit 2837